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**Report of the International Law Commission
(75th Session, A/75/10)**

Cluster I

Chapter VII – Immunity of State officials from foreign criminal jurisdiction

Chapter X – Sea-level rise in relation to international law

Chapter XI – Other decisions and conclusions of the Commission

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Mr. Chair,

At the outset, I would like to express the gratitude of this delegation for the work of the Commission during this session and for the important progress made in relation to the topics included on its agenda. Its Report of this year is a valuable account of this work.

This is an anniversary year for the ILC but, more broadly, for the legal community, with the celebration of 75 years of ILC. The contribution the ILC has brought to the systematization and the development of international law is exceptional – many of its products are now essential parts of the international law framework and shape States' conduct in the international relations.

Anniversaries are not just a time for celebration, but also a time for reflection. We must seize the opportunity to strengthen the relation between the Sixth Committee and the ILC and to reflect further on ways to make each body more ambitious, more efficient and respondent to the current needs and realities.

We are also happy to see that the ILC is committed to ensuring diversity within its membership, including in respect of gender balance, as attested by the by-elections held this year and the election of our candidate, Ms. Alina Orosan, as member. We encourage the Commission to continue consolidating the gender balance within its membership, including when it comes to the equal distribution of the work/positions within the Commission.

Before turning to our substantive comments, we wish to thank Ms. Huw Llewellyn, the former Director of the Codification Division for his many years of dedicated work in the service of the United Nations and International Law and wish his successor, Arnold Pronto, the best of luck in his newly-entrusted mandate. You can count on Romania's full support.

Turning to the topics in Cluster I, the Romanian delegation would like to make the following comments:

Chapter VII – Immunity of State officials from foreign criminal jurisdiction

1. We would like to express our appreciation for the work of the Commission on the topic of Immunity of State officials from foreign criminal jurisdiction and for the First Report of the Special Rapporteur, Mr. Claudio Grossman Guiloff. We would equally like to express our gratitude for the substantial work of the previous Special Rapporteurs on this topic, Mr. Roman Kolodkin and Ms. Concepcion Escobar Hernandez.

2. Before addressing briefly draft articles 1, 3, 4 and 5[6], as provisionally adopted by the Drafting Committee, I would like to commend the consideration that was generally given to the comments made by States and the effort to respond to many of them.

3. As regards **Draft Article 1**, we believe that the inclusion, in paragraph 3, of an explicit reference to international criminal courts and tribunals established other than directly by an international treaty, as proposed by the Special Rapporteur in his first report, would have been useful. From our point of view, there is some ambiguity as to whether the words “international agreements” cover Security Council resolutions and the *ad hoc* tribunals.

4. We also favour a deletion of the words “*as between the parties to those agreements*”, at the end of the paragraph, as it might not respect the independence of the International Criminal Court to determine its jurisdiction on the basis of the Rome Statute. It is of a particularity, that the agreements establishing an international court create both a vertical relationship in between the States parties and the court created, as well as a horizontal relationship between the States Parties. The formulation opted for by the Drafting Committee appears not to take into account the vertical relation.

5. Turning to **Draft Article 3**, listing the persons enjoying immunity *ratione personae*, we strongly support the approach of the Special Rapporteur and of the Drafting Committee not to expand immunity *ratione personae* to State officials beyond those already envisaged, namely Heads of State, Heads of Government and Ministers of Foreign Affairs. In our view, this approach adequately reflects customary international law and there are no recent developments that would justify such an extension.

6. We take note of the limited changes in the wording of **Draft Article 4**. While we understand the rationale of replacing the expression “term of office” with “period of office”, we believe that the issue could have been explained more extensively in the

commentary, without the change being made. Nevertheless, we do not oppose to the change.

7. We support the redraft done in respect of **Draft Articles 5 and 6** as adopted on first reading. We do think that the text is streamlined in the suggested manner. We concur with the opinion that there is no imperative to have similar structures for Part Two and Part Three of the Draft Articles, but the importance of ensuring a clear and coherent regulation is paramount.

8. With respect to the **possible outcome** of the work of the Commission on the topic, in our view, the Commission should recommend that the draft articles be brought to the attention of States, leaving the question of developing a treaty based on them for States to decide.

Chapter X – Sea-level rise in relation to international law

1. Romania would like to commend the authors of the Additional paper to the second issues paper, Patricia Galvao Teles and Juan Jose Ruda Santolaria, Co-Chairs of the Study Group on sea level rise in relation to international law, for their in-depth analysis of the subtopic of issues related to statehood, as well as of the subtopic of issues related to the protection of persons affected by sea-level rise. Their merits are even greater when considering that the practice of States in this field is fast evolving, and that we have witnessed recently very important developments, such as *2023 Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise*, adopted in the framework of the Pacific Islands Forum.

2. Beyond being a pressing environmental issue, sea-level rise threatens the preservation of States and carries profound human rights implications, affecting rights to housing, health, life, livelihood and culture. These effects are different, but closely interlinked.

3. Coming to substantive issues, the Additional paper is right to conclude that qualifications for statehood, as outlined in Article 1 of the Montevideo Convention on the Rights and Duties of States of 1933, concern the moment when States appear on the international stage, and that loss of one of these qualifications, such as the territorial basis, would not extinguish the legal personality of a State (what the Additional Paper

frames as the “presumption of the continuity”). Restoration of territorialized statehood in the case of total submergence of land due to sea-level rise could be possible – it is not inconceivable that total loss of territory could be reversed at a later stage due to technological progress or changes in climatic circumstances. Nor would total loss of territory due to sea-level rise affect the right of self-determination of peoples.

4. The Additional paper very usefully tries to chart various approaches that States might lawfully use in order to preserve their statehood in face of the effects of sea-level rise. We recognize the importance of agreement by the concerned populations with any solution identified.

5. Romania also points out from the start the link between sea-level rise and climate change implications on human rights, which, without overlapping completely, can have similar legal solutions. From this point of view, we agree with the conclusion of the Additional paper that the *ILC Draft articles on the protection of persons in the event of disasters* is the departure point for further analysis.

6. We commend the Commission for considering human dignity as a guiding principle for any action to be taken in the context of sea-level rise.

7. International Human Rights Law has also a role in the larger issue of Climate Justice. From this point of view, we consider that the International Court of Justice shall have an important role, as we expect its Advisory opinion on *Obligations of States in respect of climate change* to clear the picture of the current legal framework.

8. Romania also welcomes the references made in the Additional paper to relevant judgments and decisions of international and regional human rights courts and tribunals, addressing the general human rights obligations of States, which should be furtherly emphasized in the future set of Draft Conclusions – which are considered by Romania as an appropriate further development of the subject.

9. The Additional paper identifies the lack of a dedicated legal framework for those displaced by sea-level rise, and we strongly support the Commission’s call for the development of new legal protections to safeguard the rights of climate-displaced individuals.

10. We would like to once again congratulate the Commission for its progressive approach on this crucial topic.

Chapter XI – Other decisions and conclusions of the Commission

On the Chapter XI, my delegation welcomes the decision of the ILC to include two specific topics in its long-term programme of work, namely the *compensation for damage caused by internationally wrongful acts and due diligence in international law*.

Both topics are relevant for States (especially in the present international law context where climate change and massive human rights violations are holding the front page) and are well covered by State practice to be included in its programme of work.

At the same time, my delegation encourages the ILC to revisit the list of topics included in the long-term programme of work and sanitize it by deciding which topics should be eliminated for lack of relevance to States and on which work should be started by inclusion in the active agenda of the Commission.

We remain of the opinion and reiterate that the ILC should embark on studying the topic *universal criminal jurisdiction*, as such study will bring about the much needed clarity on its scope and conditions for activation.

Similarly, we encourage the ILC to focus its attention on private international law topics as well, as these topics have increased in significance on the international agenda, having the potential of becoming even more central in the future.

This concludes my intervention on this cluster.

Thank you!